

Hon. Richard A. Jones  
Hon. J. Richard Creatura

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

## AT SEATTLE

EL PAPEL, LLC; BERMAN 2, LLC; and )  
KARVELL LI, an individual, ) Civil Action No. 2:20-cv-01323-RAJ-JRC  
Plaintiffs, )  
v. )  
JAY R. INSLEE, in his official capacity as )  
Governor of the State of Washington; )  
JENNY A. DURKAN, in her official )  
capacity as the Mayor of the City of Seattle; )  
and THE CITY OF SEATTLE, a municipal )  
Corporation, )  
Defendants. )  
**NOTICE OF SUPPLEMENTAL  
AUTHORITY**

Plaintiffs wish to notify the Court of a recent federal Supreme Court ruling in *Cedar Point Nursery v. Hassid*, No. 20-107, 2021 WL 2557070 (June 23, 2021), which is relevant to this dispute.

With respect to the issue of whether the Defendants' eviction bans constitute an unconstitutional physical occupation of the Plaintiffs' properties, *see* Plaintiffs' Motion for Summary Judgment (Apr. 9, 2021), Dkt. # 93 at 26–28, Plaintiffs' Combined Response to Defendants' Cross-Motions for Summary Judgment and Reply in Support of Plaintiffs' Motion for

1 Summary Judgment (May 28, 2021), Dkt. # 111 at 29–34, *please see Cedar Point Nursery*, Slip  
 2 Op. at \*4–11 (holding the right to exclude is a fundamental element of property rights and  
 3 whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred).

4 With respect to the issue of whether a *per se* physical taking can occur where the physical  
 5 invasion is only temporary, *see* Plaintiffs' Motion for Summary Judgment (Apr. 9, 2021), Dkt.  
 6 # 93 at 26–28, Plaintiffs' Combined Response to Defendants' Cross-Motions for Summary  
 7 Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment (May 28, 2021), Dkt.  
 8 # 111 at 29–34, *please see Cedar Point Nursery*, Slip Op. at \*6 (“To begin with, we have held  
 9 that a physical appropriation is a taking whether it is permanent or temporary . . . . The duration of  
 10 an appropriation—just like the size of an appropriation—bears only on the amount of  
 11 compensation.”); *see also id.* at \*7 (“Whenever a regulation results in a physical appropriation of  
 12 property, a *per se* taking has occurred, and *Penn Central* has no place.”); *see also id.* at \*12 (“The  
 13 fact that the regulation grants access only to union organizers and only for a limited time does not  
 14 transform it from a physical taking into a use restriction.”).

15 With respect to the issue of whether injunctive relief is an appropriate remedy for Fifth  
 16 Amendment Takings challenges, *see* Plaintiffs' Motion for Summary Judgment (Apr. 9, 2021),  
 17 Dkt. # 93 at 28–29, Plaintiffs' Combined Response to Defendants' Cross-Motions for Summary  
 18 Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment (May 28, 2021), Dkt.  
 19 # 111 at 28–29, *please see Cedar Point Nursery*, Slip Op. at \*19 (BREYER, J., dissenting)  
 20 (“Finally, I touch briefly on remedies, which the majority does not address. The Takings Clause  
 21 prohibits the Government from taking private property for public use without ‘just compensation.’  
 22 U.S. Const., Amdt. 5. But the employers do not seek compensation. They seek only injunctive and  
 23 declaratory relief. Indeed, they did not allege any damages. See App. To Pet. For Cert. G-16 to G-  
 24 17. On remand, California should have the choice of foreclosing injunctive relief by providing  
 25 compensation.”).

1 DATED: June 25, 2021.  
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3 Respectfully submitted,  
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5 s/ ETHAN W. BLEVINS  
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7 s/ BRIAN T. HODGES  
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Ethan W. Blevins, WSBA # 48219  
Brian T. Hodges, WSBA # 31976  
Pacific Legal Foundation  
255 South King Street, Suite 800  
Seattle, Washington 98104  
Telephone: (425) 576-0484  
Email: EBlevins@pacificlegal.org  
Email: BHodges@pacificlegal.org

9 s/ KATHRYN D. VALOIS  
10

KATHRYN D. VALOIS\*  
Fla. Bar. No. 1010150  
Pacific Legal Foundation  
4440 PGA Blvd., Suite 307  
Palm Beach Gardens, Florida 33410  
Telephone: (561) 691-5000  
Email: KValois@pacificlegal.org

11 \* *Pro hac vice*  
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13 *Attorneys for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ ETHAN W. BLEVINS  
Ethan W. Blevins, WSBA # 48219

*Attorney for Plaintiffs*